



Massachusetts Department of Environmental Protection

Bureau of Waste Prevention – Solid Waste Management

Beneficial Use Determination

BWP SW 39 Beneficial Use Determination – Commercial Products

BWP SW 40 Beneficial Use Determination – Regulated Systems

BWP SW 41 Beneficial Use Determination – Restricted Applications

BWP SW 42 Beneficial Use Determination – Unrestricted Applications

Instructions and Supporting Materials

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- completeness checklist

Introduction

MassDEP *Permit Applications*, as well as *Instructions & Support Materials*, are available for download from the MassDEP Web site at mass.gov/dep in two file formats: Microsoft Word® and Adobe Acrobat PDF®. Either format allows documents to be printed.

Instructions & Support Materials files in Microsoft Word® format contain a series of documents that provide guidance on how to prepare a permit application. Although we recommend that you print out the entire package, you may choose to print specific documents by selecting the appropriate page numbers for printing.

Permit Applications in Microsoft Word® format must be downloaded separately. Users with Microsoft Word® 97 or later may complete these forms electronically.

Permitting packages in Adobe Acrobat PDF® format combine *Permit Applications* and *Instructions & Support Materials* in a single document. Adobe Acrobat PDF® files may only be viewed and printed without alteration. *Permit Applications* in this format may not be completed electronically.



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1. What is the purpose of these determinations?

Some types of solid waste may be used as an effective substitute for a commercial product or commodity. This is termed "beneficial use" of a solid waste. MassDEP must determine that this use of solid waste is beneficial and will not harm public health or the environment. The material is then classified as a secondary material and not as a solid waste. The approval may limit use of the material to a specific location or to a specific application of the material, or both.

Legal authority is found in MGL c. 21A, ss. 2 and 8, c. 111, ss. 150A. Regulatory authority is found in 310 CMR 19.000: Solid Waste Management Regulations, specifically 310 CMR 19.060, Beneficial Use of Solid Wastes.

2. Who must apply?

Any individual, business or organization that wants to beneficially use solid waste materials.

2a. Which application should I file, BWP SW 39, BWP SW 40, BWP SW 41, or BWP SW 42?

The application you should use is determined by the intended use of the material as defined below.

BWP SW 39. Category 1 -- Use of Secondary Materials in Commercial Products.

Products manufactured from secondary materials or secondary materials that are directly used as products are considered commercial products under the following conditions:

- When the product is used in a manner that is consistent with industry accepted product specifications or performance standards;
- When the product is controlled and managed throughout its lifecycle in a manner that effectively limits potential for illegal or inadvertent disposal or releases of hazardous material to the environment and exposure to people;
- When any adverse impacts or significant risks to public health, safety and the environment, including, but not limited to, nuisance conditions, can be evaluated and controlled.

Products applied to the land cannot be considered commercial products.

BWP SW 40. Category 2 -- Use of Secondary Materials in Regulated Systems.

Beneficial use of secondary materials at facilities permitted, approved or otherwise regulated by the Department.



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BWP SW 41. Category 3 -- Use of Secondary Materials in Restricted Applications.

Secondary materials that are beneficially used in applications that utilize risk management techniques in order to prevent adverse impact or significant risks to public health, safety and the environment, including, but not limited to, nuisances.

BWP SW 42. Category 4 -- Use of Secondary Material in Unrestricted Applications

Secondary materials that are beneficially used in applications that do not limit exposure to potential human or environmental receptors from secondary material constituents that have the potential to adversely impact or create a risk to public health, safety, or the environment, including, but not limited to, nuisance conditions. Unrestricted beneficial use proposals are subject to the most comprehensive risk evaluations.

For more clarification on which application to use please see 310 CMR 19.060, the "Guidance for Beneficial use Determinations" or contact MassDEP.

3. What other requirements should be considered when applying for these determinations?

The proponent must gather the appropriate data on the physical, chemical and biological nature of the material for which a beneficial use determination is requested. The generator of the waste material may be able to provide most or all of the required information. All relevant analytical data must be documented and provided by a certified laboratory.

All risk assessments, evaluations and other analysis must be performed by qualified and appropriate professionals experienced in that field of expertise.

Note: These additional requirements are intended to serve as a guide to the applicant. It does not necessarily include all requirements.

4. What is the application fee?

BWP SW 39 – Commercial Products.....	\$2,000
BWP SW 40 – Regulated Systems.....	\$2,000
BWP SW 41 – Restricted Applications.....	\$3,750
BWP SW 42 – Unrestricted Applications.....	Individual Rule Project



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5. What is the Primary Permit Location? What is the Reserve Copy Location?

Primary Permit Location:

DEP't. of Environmental Protection

_____ * **Regional Office**

Solid Waste Management

Reserve Copy Location:

Board of Health

(See note).

*Find your region <http://www.mass.gov/dep/about/region/findyour.htm>

Note: A copy of the application must be sent to the board of health for the community in jurisdiction of which the material is to beneficially used unless MassDEP determines that the proposed use is not limited to a specific location and therefore it is not practical to identify the board of health. The applicant should consult the appropriate MassDEP regional office by phone or letter before the application is made.

6. What are the timelines?

As of September 23, 2005 the timelines are:

	AC	T1	T2*	PC
BWP SW 39	30	30	30	**
BWP SW 40	30	30	30	**
BWP SW 41	30	60	60	**
BWP SW 42	Individual Rule Project			

*(A second technical review will only be conducted if necessary).

** (Please note that 310 CMR 19.060(5) requires that the Department shall accept written comments from the board of health for a period of not less than 21 days before issuing a final determination, unless the Department has determined that a copy of the application was not required to be sent to a board of health. See #5 above.)

7. What is the annual compliance fee?

There is no annual compliance fee for these determinations.



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8. How long are these determinations in effect?

There is no specific time limit to a determination of beneficial use unless stipulated for one time use of the material or as otherwise limited by the approval.

9. How can I avoid the most common mistakes made in applying for these determinations?

- a. Submit all the data on the chemical, physical and biological properties of the waste required for MassDEP to make a determination.
- b. Submit a signed copy of the certification form.
- c. Submit fee and one copy of the MassDEP Transmittal Form to: Department of Environmental Protection,
P. O. Box 4062, Boston, MA 02211.

10. What are the regulations that apply to these determinations? Where can I get copies?

These regulations include, but are not limited to:

- a. Solid Waste Management Regulations, 310 CMR 19.000.
- b. Timely Action Schedule and Fee Provisions, 310 CMR 4.00.

These may be purchased at:

State Bookstore (in State House)
Room 116
Boston, MA 02133
617-727-2834

State Bookstore
436 Dwight Street, Room 102
Springfield, MA 01103
413-784-1376

Also, unofficial copies of these regulations may be available on MassDEP's website at mass.gov/dep.



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Application Completeness Check List

- ☐ The MassDEP Transmittal Form is completed: <http://mass.gov/dep/service/online/trasmfrm.shtml>
- ☐ Application has been completed.
- ☐ Certification statement submitted and signed (310 CMR 19.011).
- ☐ One copy of the application has been submitted to the local board of health, unless MassDEP determines that the proposed use is not limited to a specific location and therefore the board of health cannot be identified.

To submit the application package:

- ☐ Checklist items have been completed.
- ☐ Send one copy of the application along with one copy from the MassDEP Transmittal Form to:

Department of Environmental Protection

_____ *Regional Office

Solid Waste Management

* Find your region <http://www.mass.gov/dep/about/region/findyour.htm>

AND (if required by MassDEP, with one copy of the Transmittal Form)

Board of Health

_____ (Address)

_____ (City or Town)

- ☐ Send fee of:

\$2,000 for BWP SW 39

\$2,000 for BWP SW 40

\$3,750 for BWP SW 41

Individual Rule project for BWP SW 42

along with a check or money order made payable to *Commonwealth of Massachusetts*, along with one copy of the MassDEP Transmittal Form to:

Department of Environmental Protection

P.O. Box 4062

Boston, MA 02211



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Facility ID# (if known) _____

Application for Beneficial Use Determination

Important:

When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



A. Applicant Information

Name

Street Address

City/Town

State

Zip Code

Telephone

Contact Person

Contact Telephone

Directions:

Complete A and B, as well as the applicable section of C.

Specify the plan/report and page numbers where the information is located.

Enter "N/A" if information requested is not applicable.

B. Project Information

Which permit category are you applying for?

☐ BWP SW 39

☐ BWP SW 40

☐ BWP SW 41

☐ BWP SW 42

Page #

	Plan/Report #	Page #	DEP Use Only
1. Summary of the secondary material's proposed use & handling	_____	_____	_____
2. Description of how the proposed utilization will result in a viable & beneficial substitution for a commercial product or commodity	_____	_____	_____
a. Description of the feedstock or product the secondary material is replacing	_____	_____	_____
b. Description of the proposed use of secondary material	_____	_____	_____
3. Detailed description of the proposed facility that stores, processes, or otherwise handles the secondary material proposed for use	_____	_____	_____
a. Source or origin of secondary material	_____	_____	_____
b. Processing methods used in the preparation of secondary material	_____	_____	_____
c. Description of similar products currently & historically produced by facility	_____	_____	_____
d. Annual quantities, by weight and/or volume, of the secondary material	_____	_____	_____



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B. Project Information (cont.)

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e. Storage requirements necessary for maintaining sufficient inventory to meet market demand	_____	_____	_____
4. Proposed location of use, if applicable, or types of locations where the secondary material will be used (e.g. highway rights-of-way, industrial zoned properties, etc.)	_____	_____	_____
5. Detailed physical & chemical characterization of both the secondary material proposed for beneficial use & the final product	_____	_____	_____
a. Physical properties: size, density, particle size and gradation, percent solids, organic fraction, moisture content/moisture capacity, etc.	_____	_____	_____
b. Biological properties: pathogens, etc.	_____	_____	_____
c. Chemical characterization	_____	_____	_____
i. Detailed list of chemical constituents found in the secondary material and the derived beneficial use product(s)	_____	_____	_____
ii. Identification of Critical Contaminants of Concern (CCCs)	_____	_____	_____
d. Description of sampling & analysis methods	_____	_____	_____
i. Quality assurance & quality control plan	_____	_____	_____
6. Evaluation & control of potential adverse health, safety or environmental impacts	_____	_____	_____
a. Toxics Use Reduction Plan (TURP), if applicable	_____	_____	_____
b. Risk management techniques being used (e.g., deed or other use limitations, location restrictions, engineering controls, etc.)	_____	_____	_____
c. Best Management Practices (BMPs) employed	_____	_____	_____



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C. Category-Specific Information

Page #

Complete only the applicable section.

Plan/Report #

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1. BWP SW 39: Use in Commercial Products (310 CMR 19.060(14))

- a. Physical characterization of the commercial product
- b. Constituents (including hazardous materials) contained in the product manufactured using traditional materials or products
- c. Comparative analysis of the product manufactured using the secondary material versus the traditionally used material it is replacing
 - i. Hazardous materials, including CCCs (on a weight & concentration basis)
 - ii. Processing required for use
 - iii. Storage & handling prior to actual use
 - iv. Actual use
 - v. Management or processing during its lifecycle, including, but not limited to, any destructive practices that reasonably may be expected to be employed in recycling or disposing of the material at the end of its useful life

2. BWP SW 40: Use of Secondary Materials in Regulated Systems (19.060(15))

- a. Operative DEP permit, order, or approval for the facility/site
 - i. Terms and conditions of any such permit, order or approval relevant to the proposed use
- b. General description of the facility/site activities
- c. Appropriate numerical standards, risk management criteria and other applicable requirements as identified by DEP
- d. Identification, evaluation and control of potential significant risks from the storage, transfer, processing, treatment activities and use of the secondary material



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C. Category-Specific Information (cont.)

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Complete only the applicable section.

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3. BWP SW 41: Use of Secondary Materials in Restricted Applications (19.060(16))

- a. Concentrations of hazardous materials of concern in the material proposed for use
- b. Upper concentration limits (UCLs) for those hazardous materials
- c. Background concentrations of those hazardous materials
 - i. Statewide
 - ii. Site-specific
- d. Release and exposure pathways
- e. Risk management techniques used to prevent adverse impact or significant risks to public health, safety & the environment, including nuisance conditions
 - i. Engineering controls
 - ii. Use limitations
 - iii. Other techniques
- f. Hazardous materials concentrations above UCLs
- g. Hazardous materials concentrations not below background
 - i. Demonstration that these are within acceptable limits through (a) Numerical Standards or (b) Total Waste Reuse Risk
- h. Evaluation and control of significant risks to public health and safety
- i. Evaluation and control of significant risks to the environment
- j. End of use management
- k. Deed notification



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C. Category-Specific Information (cont.)

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4. BWP SW 42: Use of Secondary Material in Unrestricted Applications			
a. Description of proposed use	_____	_____	_____
b. Conservative, unrestricted general exposure assumptions	_____	_____	_____
c. Complete Section 3 (BWPSW41) on page 4 of this form	_____	_____	_____

D. Certification: 310 CMR 19.011

Any person, required by these regulations or any order issued by the Department, to submit papers shall identify themselves by name, profession, and relationship to the applicant and legal interest in the facility, and make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information including possible fines and imprisonment."

Print Name _____

Authorized Signature _____

Position/Title _____

Date _____